

ERWIN G. WELCH)
Claimant)
VS.)
) Docket Nos. 230,009 & 230,010
VULCAN MATERIALS COMPANY)
Respondent)
Self-Insured)

The Appeals Board will consider the question of whether claimant's shoulder and neck problems arose out of and in the course of his employment with respondent.

Claimant is a laborer who has worked for Vulcan Materials for approximately 23 years. His job involves changing "cells" which requires the use of a torch and an impact gun in a small confined space. Claimant first began noticing problems in his shoulder in July 1997. He reported this problem to his supervisor, Mr. Arden Unruh, but did not go to the nurse at that time. In August 1997, after spending two weeks working on what was described by Mr. Unruh as very heavy work, claimant went to the nurse and reported the shoulder and neck pain. Claimant was referred to several doctors by the company nurse and has undergone conservative care including several diagnostic procedures, physical therapy and exercise. Claimant has been on light duty since August 1997.

Claimant was referred to Dr. Harry Morris, an orthopedic surgeon, who recommended surgery to repair a bone spur found by x-ray in claimant's shoulder and also to investigate whether claimant's rotator cuff has been damaged and to repair the rotator cuff if necessary.

The record is somewhat confusing regarding which shoulder claimant is alleging causes him problems. The supervisor's investigation report prepared by Mr. Unruh on August 29, 1997, indicates it is claimant's right shoulder causing problems. Dr. Morris's medical report of November 3, 1997, indicates examination and treatment of claimant's left shoulder. The Via Christi registration record of September 15, 1997, shows bilateral shoulder impingement. The Vulcan Chemicals nurses note dated September 3, 1997, shows physical therapy and "work comp" for "b/l" shoulder impingement, which the Appeals Board assumes means bilateral. In addition, the September 15, 1997, Via Christi report from Nancy Woodruff, R.P.T., shows claimant's right shoulder became symptomatic one year before and his left shoulder became symptomatic approximately two months before the September date. This would indicate that the shoulder surgery contemplated by Dr. Morris is for the left shoulder as it became symptomatic at the time of the accident in July 1997, approximately two months prior to this physical therapy note.

The medical records are consistent in one aspect in that all discussions regarding claimant's shoulder or shoulders contemplates his shoulder problems in some way being related to his work activities. While it is acknowledged that the bone spur in claimant's shoulder preexisted the July 1997 date of accident, it also appears from the medical records that the ongoing physical demands of claimant's job aggravated this condition.

In addition, claimant testified his left shoulder became symptomatic while working at his heavy labor job and the work made his shoulder hurt worse. Claimant was placed on light duty after the August 1997 shoulder problems and claimant's shoulder has improved somewhat since that time, again an indication that the heavy work performed by claimant aggravated claimant's shoulder problems.

A note from the January 6, 1998, medical report of Dr. Patrick J. Fahey shows that claimant was being examined for bilateral rotator cuff impingement with the left greater than the right. Dr. Fahey opined on page three of his report that, within a reasonable degree of medical certainty, Mr. Welch's symptoms were the result of the injuries sustained as a result of the job-related duties performed for Vulcan Materials Company.

The Appeals Board finds, after reviewing the medical evidence and the testimony, that claimant has proven accidental injury arising out of and in the course of his employment with respondent with the recommended treatment apparently designated for the left shoulder. While claimant has ongoing complaints to his neck, he admits that they are intermittent and have been in existence for at least three years since suffering an earlier injury. The Appeals Board cannot find at this time that claimant's neck complaints are related to an accidental injury suffered from his employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated March 10, 1998, should be, and is hereby, reversed in part and this matter is remanded back to the Administrative Law Judge for consideration of claimant's request for medical treatment and temporary total disability compensation for the left shoulder.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
John B. Rathmel, Overland Park, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director